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| EXAMINER |
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NGUYEN, TAN D

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09/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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| Office Action Summary | Application No. 10/014,908 | Applicant(s) CIRCENIS, EDGAR | |
| | Examiner Tan Dean D. Nguyen | Art Unit 3689 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18, 19, 21-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18, 19, 21-28 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment of 5/8/09 has been entered. Claims 1-16, 18-19, 21-28 and 30 are pending.

1) Amended claims: claims 1, 10-12, 16, 19, 24 and 26.

2) canceled: 17, 20 and 29.

They comprise of 4 groups:

1) system: 1-9,

2) method¹: 10-15, 22-23,

3) method²: 16, 18-19 and 21-23, and

4) method³: 24-28 and 30.

2. As of 5/8/09, independent system claim 1 is as followed:

Claim 1 (currently amended): A system for on-demand computer pricing, comprising;

a) a plurality of instant capacity on demand (iCOD) computers, wherein each iCOD computer has at least one asset class, each asset class having a number of monitored assets associated with the at least one asset .class, wherein the monitored assets consist of active assets and inactive assets in the at least one asset class and wherein the plurality of iCOD computers comprise a total amount of inactive assets in the at least one asset class, the system, comprising:

b) a network ~~connection~~ connecting the plurality of iCOD computers; and

c) an auditing system operably connected to the plurality of iCOD computers using the network ~~connection~~, the auditing system comprising:

c1) a memory that stores: data about monitored assets for each asset class for each iCOD computer, and

sums, across all of the plurality of iCOD computers within the network, of the monitored inactive assets for at least one asset class; and

c2) instructions for executing:

a notification, process that provides a notification when the total amount of inactive assets in at least one asset class for all of the plurality of iCOD computers changes; and

a process ~~allowing payment free transfer of~~ transferring active assets from one iCOD computer to another iCOD computer within the network without payment from a user.

3. Independent method claim 10 is as followed:

Claim 10 (currently amended): A computer-implemented method for measuring usage of at least one asset class over a network comprising a plurality of instant capacity on demand (iCOD) computers, the method being executed on a computer including a processor and comprising:

a) receiving data about a quantity of inactive assets of the at least one asset class for each iCOD computer on the network;

b) using the processor to sum. ~~summing~~ the quantity of inactive assets of the at least one asset class for all of the plurality of iCOD computers on the network, thereby obtaining a sum of inactive assets for the at least one asset class;

c) providing a notification if the sum of inactive assets differs from a previously specified total for the inactive assets for the at least one asset class; and

d) ~~allowing payment free transfer of~~ using the processor to transfer active assets from one iCOD computer to another iCOD computer within the network without payment from a user.

Note: for convenience, alphabetical letters (a) – (c) are added to the beginning of each step.

4. Note: In amended independent **method claims 10, 16 and 24**, step (b), the phrase "...to sum the quantity of"...asset class", and step (d) of "to transfer active assets from ...from a user" assist the customer with solving problems related to the printing device..." are not a positively recited method steps but, rather, is mere intended use of the used processor and thus having no patentable weight. See MPEP 2173.05 (q), 2106, and 2111.04, which indicate that a method claim requires active, positive steps. Changing the language to "Using the computer, summing ..." and "Using the computer, transferring ..." are recommended if positive limitations are intended or required.

Principles of Law

1) Note: independent claim 1-9 are apparatus claims. In examination of the apparatus claim, the claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See (1) MPEP 2114. (2) *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does, i.e. "device which acts or performs ...". (3) *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. (4) *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Also, this is an apparatus claim and intended use limitation for the system/device or apparatus, i.e. "for on-demand computer pricing" carries no patentable weight.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-9 (apparatus) are rejected under 35 U.S.C. 101 because the claimed invention is directed to more than one class of statutory subject matter.

The independent claim 1 begin by discussing a system comprising a plurality of computers, a network, an auditing system, a memory, however the critical parts of the invention which are in the memory components comprising "method steps", such as "stores...., sums,, instructions for executing: that provides a notification...computer changes; and a process of transferring active assets ...without payment from a user. Dependent claims 3 "transmit...", 4 "generates...", 5 "generates...", 6 "includes...", etc., respectively use language that is used in the claims of a method claim. "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only". See Ex parte Lyell (17 USPQ2d 1548).

Claim Rejections - 35 USC § 112

7. Claims 1-9, 10-15, 22-23, 16, 18-19 and 21, 24-28 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1) Claims 1-9 are vague and indefinite since the claims uses "method steps" such as "stores...., sums,, instructions for executing: that provides a notification...computer changes; and a process of transferring active assets ...without payment from a user. Dependent claims 3 "transmit...", 4 "generates...", 5 "generates...", 6 "includes...", etc., in an apparatus claims. See IPXL Holdings. Va. Amazon.com (Fed. Circuit 2005). System claim that includes a method step is invalid as indefinite because it's not clear what is the scope of the claim.

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2) In independent claims 10, 16 and 24, it's not clear the relationship between the last 2 steps? What happens to the result of the "notification" with respect to "inactive assets" issue? Is there anything done with the "inactive assets" after the notification?

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. **Claims 1-9, 10-15, 22-23, 16, 18-19 and 21, and 24-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over (1) AAPA (applicant admitted prior art) in view of (2) ARTICLE 11/1999 and (3) PROIETTI.**

As for independent claims 1 and 10, AAPA, as shown in the "Background" of pages 1-2, fairly discloses a system and method for measuring at least one monitored asset (computer component, i.e. CPU) belonging to at least one (or 1) asset class (CPU) over a network with a plurality of computers (cluster) comprising:

(a) receiving a data about an inactive asset (computer components, i.e. CPU) at the at least one asset class (CPU or storage) for each computer on the network,

(b) summing the quantity of inactive asset (computer components, CPUs) of the at least one asset class for each iCOD system (computer) individually on the network, thereby forming a sum of assets data, and

{see page 1, lines 15-27}

(c.) providing a notification (reminder) if the sum of inactive assets data differs from a previously specified total data for the assets for the at least one asset class, wherein the assets may be either inactive or active.

{see page 1, 2nd paragraph or lines 22-27}.

Therefore, it appears that AAPA teaches the claimed invention except for carrying out step (b) for all of the plurality of iCOD computers on the network and step (d).

In a similar iCOD environment, **ARTICLE 11/1999** discloses future on-demand programs which will include other server (CPU) components, such as (1) memory and (2) input/output (I/O), (3) storage sub-systems and (4) HP's HyperPlex clusters to meet demands of customers whose livelihoods depend on delivering high levels of capacity, performance and availability for Internet-based applications and "pay as you go" infrastructure program which allows dynamic response to ever-changing business demands which is sensible and beneficial (economical) to the server and storage customers {see page 1, paragraphs 2, 4, 5 and 6, page 2, 1st and 2nd}. **ARTICLE 1999** also teaches the concept of providing iCOD solution for HP 9000 Enterprise Serverss

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and when customers' needs change and they need more processing power, they can instantly activate the needed processors with a simple HP-UX command and there will be no charge for activation {see page 1, paragraphs 4, 5 and page 2, paragraph 2}.

It would have been obvious to modify the "on-demand" or "pay as you go" program/method of AAPA by adjusting the summing or sum of assets to include other computers (CPU/server) or components, such as (1) memory and (2) input/output (I/O), (3) storage sub-systems or (4) HP's HyperPlex **clusters**, in steps (a)-(c.) and on plurality of computers/servers (cluster or group) as taught by ARTICLE 11/1999 for one of the benefits cited above such as dynamic response, pay as you go, or sensible and beneficial (economical) to meet the consumer's demands for speed, content, availability, cost, etc. of internet-based applications which depend on those 4 variables cited above. Again, ARTICLE 1999 fairly teaches the users can instantly activate the needed processors with a command and no charge for activation, which indicate that the account/contract contains a plurality of iCOD computers (processors) or the provided clusters contain a plurality of iCOD computers (processors or servers). As for the amended limitation of the last step, this is inherently included or taught in view of the teachings of ARTICLE 11/1999 in view of AAPA in view of the teachings of "no charge for activation" as cited in above. Moreover, putting more than one computer on the service contract or account would have been obvious as mere duplicating service/parts for multiple effects on the same account if desired. See *In re Harza*, 124 USPQ 378, 380 (CCPA 1960).

PROIETTI teaches a method for managing/monitoring/controlling integrated services to minimize the high recurring equipment subscription service costs for each equipment when applied to group of equipments or collective operations of equipments by managing/controlling and sharing a limited number of equipment subscription services (i.e. 2 subscription services) among a group of equipments (i.e. 3-5 equipments) by remote programming so that transfer of active asset/equipment usage upon activation is payment free since the service is limited to within the desired subscribed service and as the other equipment is deactivated {see col. 1, lines 20-67, col. 2, lines 1-32, and cols. 3-4 and 8, Figs. 1, 2 and 4}. It would have been obvious to modify the teachings of AAPA, step c) by managing/controlling and sharing a limited number of equipment subscription services (i.e. 2 subscription services) among a group of equipments (i.e. 3-5 equipments) by remote programming as taught by PROIETTI so that transfer of active asset/equipment usage upon activation is payment free since the service is limited to within the desired subscribed service and as the other equipment is deactivated, thus minimizing the high recurring equipment subscription service costs for each equipment when applied to group of equipments or collective operations of equipments.

As for dep. claim 11 (part of 10 above), which deals with well known audit reporting parameters/features, i.e. decrypting data due to sensitive data for personal or security reason, this is non-essential to the claimed invention and is well known and/or inherently included in AAPA or PROIETTI or would have been obvious to do so for security/personal reason.

As for dep. claims 12-13 (part of 10 above), which deals with well known licensing auditing (iCOD / licensing) parameters, i.e. comparing actual/reported data to expected data for monitoring usage, these are well known and inherently included in AAPA {see page 1, 2nd full paragraph}.

As for dep. claims 14-15, 22-23 (part of 10 above), which deals with well known licensing auditing (iCOD) parameters, i.e. issuing a payment or an invoice request from the system vendor, these are well known parameters and are taught in AAPA page 1, 2nd paragraph.

As for independent system¹ claim 1, which is the system to carry out independent method claim 10 above, it's rejected over the system of AAPA /PROIETTI to carry out the method claim 1 as cited above. Moreover, it would have been obvious to a skilled artisan to set up the proper system to carry out the method steps as shown in claim 10 above.

As for dep. claims 2-5 (part of 1 above), which have the same limitations as in dep. claims 11-15 respectively, they are rejected for the same reasons set forth in dep. claims 11-15 above.

As for dep. claims 6-9 (part of 1 above), which deals with well known iCOD parameters, i.e. CPU, hard disk capacity, memory (storage), or I/O ports, etc., these are taught in AAPA.

As for independent method² claim 16, which explicitly differs from independent method claim 10 at the 1st step "receiving data about", however, the result of the 1st and

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2nd steps of claim 16, “measuring a quantity” and “transmitting the data about the quantity” producing the same result as in the 1st step of claim 10 above. Therefore, the 1st and 2nd steps of claim 10 are inherently included in the teachings of AAPA, page 1, 2nd paragraph.

As for dep. claim 18 (part of 16 above), which deals with well known licensing auditing (iCOD) parameters, i.e. measuring a quantity of inactive/active component, these are well known parameters and are taught in AAPA page 1, 2nd paragraph.

As for dep. claims 19, 21 (part of 16 above), which have the same limitations as in dep. claims 11-15 respectively, they are rejected for the same reasons set forth in dep. claims 11-15 above.

As for independent method³ claim 24, which differs from independent method claim 10 at the 1st step “grouping the computers into at least one cluster”, or “grouping”, this concept is fairly taught in PROIETTI.

As for dep. claim 25 (part of 10 above), which deals with well known audit reporting parameters of a clusters of network computers, i.e. registering the computers into the cluster, this is non-essential to the claimed invention and is inherently included in AAPA or PROIETTI or would have been obvious to do so for keeping track of the computers in a cluster.

As for dep. claims 26-29, 30 (part of 24 above), which have the same limitations as in dep. claims 11-15 respectively, they are rejected for the same reasons set forth in dep. claims 11-15 above.

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11. Claims 1-9, 10-15, 22-23, 16, 18-19, 21 and 24-28, 30 are rejected (2nd time) under 35 U.S.C. 103(a) as being unpatentable over (1) AAPA (applicant admitted prior art) in view of (2) HE et al or BROWN et al and further in view 3) PROIETTI.

As for independent claims 1 and 10, AAPA, as shown in the “Background” of pages 1-2, fairly discloses a system and method for measuring at least one monitored asset (computer component, i.e. CPU) belonging to at least one (or 1) asset class (CPU) over a network with a plurality of computers (cluster) comprising:

(a) receiving a data about an inactive asset (computer components, i.e. CPU) at the at least one asset class (CPU or storage) for each computer on the network,

(b) summing the quantity of inactive asset (computer components, CPUs) of the at least one asset class for each iCOD system (computer) individually on the network, thereby forming a sum of assets data, and

{see page 1, lines 15-27}

(c.) providing a notification (reminder) if the sum of inactive assets data differs from a previously specified total data for the assets for the at least one asset class, wherein the assets may be either inactive or active,

{see page 1, 2nd paragraph or lines 22-27}.

Therefore, it appears that AAPA teaches the claimed invention except for carrying out step (b) for all of the plurality of iCOD computers on the network and step (d).

HE et al is cited to teach the integration of multiple individual accounts into a consolidated server (account) to relieve the tremendous burden of managing multiple

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copies of user accounts and synchronizing these copies on different network elements {see col. 21, lines 55-65, col. 23, lines 35-65, col. 25, lines 25-35, Figs. 2-3}. It would have been obvious to modify the teachings of AAPA by combining the multiple user accounts into an integrated account as taught by HE et al for the benefit of relieving the tremendous burden of managing multiple copies of user accounts and synchronizing these copies on different network elements as cited above.

BROWN et al is cited to teach well known concept of having an account server that contains either a single server system or multiple server systems that provide universal access to the listings of the accounts {see col. 7, lines 10-25, Fig. 2}. It would have been obvious to modify the teachings of AAPA by combining the multiple user accounts into an integrated account as taught by HE et al for the benefit of relieving the tremendous burden of managing multiple copies of user accounts and synchronizing these copies on different network elements as cited above. It would have been obvious to modify the teachings of AAPA by providing multiple server systems that provide universal access to the listings of the accounts as taught by BROWN et al if desired.

Moreover, putting more than one computer on the service contract or account would have been obvious as mere duplicating service/parts for multiple effects on the same account if desired. See *In re Harza*, 124 USPQ 378, 380 (CCPA 1960).

AAPA/HE et al or BROWN et al teaches the claimed invention except for step (d).

PROIETTI teaches a method for managing/monitoring/controlling integrated services to minimize the high recurring equipment subscription service costs for each

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equipment when applied to group of equipments or collective operations of equipments by managing/controlling and sharing a limited number of equipment subscription services (i.e. 2 subscription services) among a group of equipments (i.e. 3-5 equipments) by remote programming so that transfer of active asset/equipment usage upon activation is payment free since the service is limited to within the desired subscribed service and as the other equipment is deactivated {see col. 1, lines 20-67, col. 2, lines 1-32, and cols. 3-4 and 8, Figs. 1, 2 and 4}. It would have been obvious to modify the teachings of AAPA, step c) by managing/controlling and sharing a limited number of equipment subscription services (i.e. 2 subscription services) among a group of equipments (i.e. 3-5 equipments) by remote programming as taught by PROIETTI so that transfer of active asset/equipment usage upon activation is payment free since the service is limited to within the desired subscribed service and as the other equipment is deactivated, thus minimizing the high recurring equipment subscription service costs for each equipment when applied to group of equipments or collective operations of equipments.

As for dep. claim 11 (part of 10 above), which deals with well known audit reporting parameters/features, i.e. decrypting data due to sensitive data for personal or security reason, this is non-essential to the claimed invention and is well known and/or inherently included in AAPA or PROIETTI or would have been obvious to do so for security/personal reason.

As for dep. claims 12-13 (part of 10 above), which deals with well known licensing auditing (iCOD / licensing) parameters, i.e. comparing actual/reported data to

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expected data for monitoring usage, these are well known and inherently included in AAPA {see page 1, 2nd full paragraph}.

As for dep. claims 14-15, 22-23 (part of 10 above), which deals with well known licensing auditing (iCOD) parameters, i.e. issuing a payment or an invoice request from the system vendor, these are well known parameters and are taught in AAPA page 1, 2nd paragraph.

As for dep. claims 2-5 (part of 1 above), which have the same limitations as in dep. claims 11-15 respectively, they are rejected for the same reasons set forth in dep. claims 11-15 above.

As for dep. claims 6-9 (part of 1 above), which deals with well known iCOD parameters, i.e. CPU, hard disk capacity, memory (storage), or I/O ports, etc., these are taught in AAPA.

As for independent method² claim 16, which explicitly differs from independent method claim 10 at the 1st step “receiving data about”, however, the result of the 1st and 2nd steps of claim 16, “measuring a quantity” and “transmitting the data about the quantity” producing the same result as in the 1st step of claim 10 above. Therefore, the 1st and 2nd steps of claim 10 are inherently included in the teachings of AAPA, page 1, 2nd paragraph.

As for dep. claim 18 (part of 16 above), which deals with well known licensing auditing (iCOD) parameters, i.e. measuring a quantity of inactive/active component, these are well known parameters and are taught in AAPA page 1, 2nd paragraph.

As for dep. claims 19, 21 (part of 16 above), which have the same limitations as in dep. claims 11-15 respectively, they are rejected for the same reasons set forth in dep. claims 11-15 above.

As for independent method³ claim 24, which differs from independent method claim 10 at the 1st step “grouping the computers into at least one cluster”, or “grouping”, this concept is fairly taught in PROIETTI.

As for dep. claim 25 (part of 10 above), which deals with well known audit reporting parameters of a clusters of network computers, i.e. registering the computers into the cluster, this is non-essential to the claimed invention and is inherently included in AAPA or HE et al col. 23, lines 1-35 or would have been obvious to do so for keeping track of the computers in a cluster.

As for dep. claims 26-28 and 30 (part of 24 above), which have the same limitations as in dep. claims 11-15 respectively, they are rejected for the same reasons set forth in dep. claims 11-15 above.

Response to Arguments

12. Applicant's arguments, see paper, filed 4/6/09, with respect to the 103 rejections of **amended** claims 1-16, 18-19, 21-28 and 30 over

(1) AAPA (applicant admitted prior art) in view of (2) ARTICLE 11/1999 and (3) PROIETTI, and

(1) AAPA (applicant admitted prior art) in view of (2) HE et al or BROWN et al and further in view 3) PROIETTI,

About the issues with respect to the "summing" and "transferring" limitations are not persuasive for the following reasons:

In amended independent system claim 1, and **method claims 10, 16 and 24**, step (b), the phrase "...to sum the quantity of"...asset class", and step (d) of "to transfer active assets fromfrom a user" assist the customer with solving problems related to the printing device..." are not a positively recited method steps but, rather, is mere intended use of the used processor and thus having no patentable weight. See MPEP 2173.05 (q), 2106, and 2111.04, which indicate that a method claim requires active, positive steps. Furthermore, many of the features in apparatus claims 1-10 have no patentable weight as indicated above.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 2003/0079092, section [0006] discloses the benefit of iCOD for storage disk which is high cost for capital, operating expenses for power, raised floor spaces, heat, no return on assets or investments (ROA or ROI) on unused storage disk.

No claims are allowed.

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15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail CustomerService3600@uspto.gov.

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor Janice Mooneyham can be reached at (571) 272-6805.

The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689